

REMARKS

Examiner Araj is initially thanked for allowing claims 10-14 of this case in the present Office Action. He has also initially rejected claims 1-9 and 15-33, and reconsideration of the rejected claims is respectfully requested.

In the pending Office Action, the Examiner alleged that claims 1-3, 5-9, 15-17, 19-24 and 26-31 were anticipated by U.S. Patent No. 6,187,005 to Brace. Respectfully, the Brace reference does not show all elements of any of those claims, and therefore withdrawal of this rejection is requested.

As one example, the Office Action alleges that the nut 106 shown in Brace is instead a "washer," and compares nut 106 to the washer recited in claims 1 and 22. Respectfully, a "washer" and a "nut" are different structures having different purposes, and the nut of Brace cannot be considered the washer of the claims. However, to clarify the claim language, the term "substantially radial," meant in the sense of "non-annular," has been added. Not only does Brace not include the recited washer, but the only structure of that nut that could possibly be a groove is part of the internal thread of nut 106. On at least these bases, Brace does not show all features of independent claims 1 and 22.

Claims 2-9 and 23-33 depend from independent claims 1 and 22, and on at least that basis are also not anticipated by the Brace reference.

Independent claim 15 recites a method that includes providing a body and sliding a washer and an offsetting member over said body. Neither the nut 106 nor the ball clamp 100 of Brace "slide over" a body. Nut 106 threads onto Brace's screw, and ball clamp 100 is around the screw and appears to pivot inside, not over, item 90 of Brace. Thus, not only does Brace lack a "washer," as discussed above, but these steps of claim 15 are also missing from the reference.

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Claims 4, 18, 25, 32 and 33 were initially rejected as allegedly obvious over the Brace reference. Withdrawal of these rejections is respectfully requested in light of the following. First, as explained above, Brace does not show all elements of the independent claims in this case, and therefore a proper showing of all elements of claims 4, 18, 25, 32 and 33 also has not been made. Second, it appears that the Examiner used his own knowledge or information from an uncited source for this rejection, particularly in terms of "suitability" of shape memory alloys and use of clamps and hooks. A proper reference or affidavit from the Examiner is respectfully requested if information outside of the record is relied on. Third, it is particularly noted that making the recited offsetting member of a shape memory alloy is not obvious from the Brace reference. As to suitability, the Office Action does not point to particular information from any reference that suggests that shape memory alloys are suitable for a piece pressed between a spinal rod or other elongated member and a screw or other fastener. Such alloys have been used in spinal rods, to change and hold a particular shape toward support of a repositioned spine, and as clamping bands on one side of a clamp or holding piece. Further, the Office Action suggests that Brace's ball clamp 100 is an "offsetting member." Ball clamp 100 is compressed by hole 108 when screw 94 is drawn upward by nut 106. Making clamp 100 out of a material that can change shape means that its outer and/or inner surfaces would change, making Brace's construct more difficult to tighten or introducing play between the screw and the clamp. Since a shape memory material for the ball clamp would make Brace's device less useful, or perhaps defeat its use, the use of such material with respect to Brace cannot be considered obvious.

New dependent claims 34-39 are being presented. They are supported by the specification, particularly Figures 1, 5 and 6 and associated text. No new matter has been added. Further, they recite features that are not present in the Brace reference and would not

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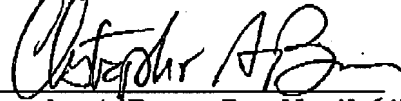
be obvious from a proper combination of cited references. Entry and favorable consideration of these claims is respectfully requested.

Additionally, new references have been discovered, and they are being cited in an accompanying information disclosure statement. These references are not believed to be any more pertinent than the references already found via the Examiner's search. The undersigned regrets any inconvenience to the Examiner.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action but are simply provided to address the rejections made in the Office Action in the most expedient fashion. Applicants reserve the right to contest later positions taken in the Office Action that are not specifically addressed herein. None of the arguments made herein are intended to limit the literal or equivalent scope of the claims.

In conclusion, because the claims in this case are allowable over the references relied on in the pending Office Action for at least the above reasons, a Notice of Allowance in this case is respectfully solicited.

Respectfully submitted,



Christopher A. Brown, Reg. No. 41,642
Woodard, Emhardt, Moriarty, McNett & Henry LLP
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317) 634-3456

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